

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TERRANCE BAULCH,

Plaintiff,

Case No. 07-11078

Hon. Gerald E. Rosen

vs.

LYNN A. HELLAND, *et al.*,

Defendants.

_____ /

**ORDER GRANTING PLAINTIFF'S MOTION FOR RECONSIDERATION
AND VACATING ORDER STRIKING NOTICE OF VOLUNTARY DISMISSAL**

At a session of said Court, held in
the U.S. Courthouse, Detroit, Michigan
on November 14, 2007

PRESENT: Honorable Gerald E. Rosen
United States District Judge

By order dated November 6, 2007, this Court directed that a notice of voluntary dismissal filed by Plaintiff on October 30, 2007 be stricken from the docket in this case. In so ruling, the Court reasoned that Plaintiff could no longer voluntarily dismiss this action by notice under Fed. R. Civ. P. 41(a)(1), where Defendants had responded to Plaintiff's complaint by filing a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). Plaintiff now seeks reconsideration of the Court's November 6 order, arguing that it is inconsistent with Sixth Circuit precedent holding that a Rule 12(b)(6) motion does not extinguish a plaintiff's right to voluntarily dismiss a suit by notice under Rule 41(a)(1).

Upon reviewing the precedent identified by Plaintiff, the Court agrees that its

November 6 order cannot stand. The plain language of Rule 41(a)(1) permits dismissal by notice “at any time before service by the adverse party of an answer or of a ***motion for summary judgment***, whichever first occurs.” Fed. R. Civ. P. 41(a)(1) (emphasis added). The Sixth Circuit has held that the Rule “means what it says,” and that a Rule 12(b)(6) motion to dismiss does not qualify as a “motion for summary judgment” that extinguishes a plaintiff’s right to dismissal by notice. Aamot v. Kassel, 1 F.3d 441, 444 (6th Cir. 1993) (internal quotation marks and citation omitted). It follows that the Court erred in holding that Plaintiff was not entitled to voluntarily dismiss this suit by notice, and in striking the notice of voluntary dismissal filed by Plaintiff on October 30, 2007.

Accordingly,

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff’s November 7, 2007 motion for reconsideration is GRANTED. IT IS FURTHER ORDERED that the Court’s November 6, 2007 order striking Plaintiff’s notice of voluntary dismissal is VACATED, and that Plaintiff’s October 30, 2007 notice of voluntary dismissal is restored to the docket in this case, with the result that this case is dismissed in accordance with Plaintiff’s notice.

Dated: November 14, 2007

s/Gerald E. Rosen
Gerald E. Rosen
United States District Judge

I hereby certify that a copy of the foregoing document was served upon counsel of record on November 14, 2007, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry

Case Manager